REMARKS

Claims 1-28 are pending in the application. Claims 1-28 have been rejected. Claim 26 has been rewritten in independent form. Reconsideration of the Claims is respectfully requested.

I.   REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-8 and 13-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by Eliott (US Patent No. 6,468,160). These rejections are respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant notes initially that the pending final rejections based on Eliott were first presented in the previous Office Action mailed on November 15, 2005. However, that previous Office Action contained no discussion or explication of the contents of Eliott. Instead, the November 15, 2005 Office Action basically provides copies of Claims 1-8 and 13-24, with citations to passages from Eliott inserted parenthetically at selected points in the copied claims to indicate where the various claim limitations are allegedly found in Eliott. Such summary allegations of anticipation are clearly insufficient in view of, for example, 35 U.S.C. § 102 and 37 CFR § 1.104(c)(2). In particular, 35 U.S.C. § 102 states that "[a] person shall be entitled to a patent unless" the prior art reference describes the invention. This is of course an axiomatic aspect of U.S. Patent Law -- that the Patent Office, not the Applicant, bears the burden of proof with respect to anticipation. Furthermore, 37 CFR § 1.104(c)(2) states that "[w]hen a reference is complex or shows or describes inventions other than that

claimed by the applicant, ... [t]he pertinence of each reference, if not apparent, must be clearly explained" (emphasis added). The aforementioned parenthetical citation technique employed in the November 15, 2005 Office Action manifestly fails to provide any explanation as to the pertinence of Eliott, much less the clear explanation that is required by 37 CFR § 1.104(c)(2) .

Nevertheless, in the February 3, 2006 Response to the aforementioned November 15, 2005 Office Action, Applicant elected not to object to the aforementioned deficiencies. Instead, in the interest of expediting prosecution, and in order to facilitate the Examiner's understanding of Eliott and the claimed invention, the February 3, 2006 Response goes far beyond Applicant's procedural responsibility. More specifically, despite the plainly summary nature of the rejections in the November 15, 2005 Office Action, the February 3, 2006 Response presents a detailed analysis of (1) the entire content of all portions of Eliott that are cited parenthetically within the copies of independent Claims 1 and 13 in the November 15, 2005 Office Action, and (2) how Claims 1 and 13 distinguish all of the content of the parenthetically cited portions of Eliott. This analysis occupies three full pages of the aforementioned February 3, 2006 Response (see pages 2-5 of that Response).

The pending final Office Action essentially fails to engage Applicant's aforementioned detailed analysis. A total of eight sentences are presented in response to Applicant's three-page analysis. Those eight sentences are notably cursory in nature, and contain virtually no explanation of how the Examiner believes the extensive and detailed content of Eliott (already fully analyzed in Applicant's February 3, 2006 Response) allegedly anticipates the claimed invention, and why the Examiner believes that Applicant's detailed analysis of Eliott is incorrect. This not only fails to explain clearly the pertinence of Eliott as required by 37 CFR § 1.104(c)(2), but also fails to meet the standard of MPEP § 707.07(f), which states that "[w]here the applicant traverses any rejection, the examiner should, if he or

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she repeats the rejection, take note of the applicant's argument and answer the substance of it." Eight cursory sentences cannot fairly be considered to "answer the substance" of Applicant's detailed three-page analysis.

The pending Office Action also appears to repeat the aforementioned parenthetical citation technique of the November 15, 2005 Office Action. As indicated above, this parenthetical citation technique represents nothing more than summary allegations that each of Applicant's claim limitations is found in Eliott. Nevertheless, despite the fact that the pending Office Action is deficient with respect to at least 35 U.S.C. § 102, 37 CFR § 1.104(c)(2), and MPEP § 707.07(f), Applicant has, once again in the interest of expediting prosecution, carefully studied the aforementioned eight sentences (to the extent possible given their cursory nature), and they are addressed below as best understood.

Independent Claim 1 recites "*at least one key associated with said signal generator; comparing said at least one code associated with said waveform and said at least one key; and downloading said waveform to said signal generator under condition that said at least one code matches said at least one key.* " Claim 13 recites similar features. These exemplary features of Claims 1 and 13 are not found in Eliott, for at least all of the reasons given in Applicant's earlier three-page discussion in the February 6, 2006 Response. That discussion is incorporated herein by reference. The eight sentences that the pending Office Action proffers in rebuttal of Applicant's extensively detailed position are quoted below in boldface type, and are grouped together in four passages (labeled A-D herein for convenience) as they are found in the Office Action. Each passage is followed by Applicant's rebuttal of that passage.

A. "The examiner asserts that Eliott teaches a digital signal. The applicant has defined a waveform as digital data that is to be converted into an analog signal. The digital signal as taught by Eliott can be converted into an analog signal."

It is not clear what is meant by the assertion that Eliott teaches a digital signal. The digital information that Eliott downloads, from the server to the expansion device, is video game software. The software is undeniably digital information, in the form of instructions for execution by a computer in the game console. Accordingly, the first sentence in the above-quoted passage might represent a contention that the game software is in effect a digital signal that controls the operation of the computer. It is therefore assumed (hypothetically and for purposes of argument only) throughout this paper that the Office Action interprets the game software to be a digital signal. But, as discussed below, the conversion of game software cannot be fairly said to produce an analog "signal", in contrast to the assertion in the third sentence of passage A above. And any general notion that digital information "can be" converted to analog domain energy does not provide adequate basis for concluding that Eliott's game software (or any other collection of digital information) anticipates Applicant's recited waveform. As indicated in the above-quoted passage, the waveform recited by Applicant refers to digital data that "is to be" converted into an analog signal. Inherent in the plain meaning of "is to be converted" is the concept that the digital data corresponds to an analog signal that is desired. That is, conversion of the recited waveform will produce analog domain energy that is useful and meaningful, whereas conversion of the Eliott software will not. Clearly then, waveform conversion produces in the analog domain a "signal" within the plain meaning of that word, but software conversion does not. Applicant therefore maintains that the Office Action has failed to carry the burden of showing that Eliott teaches the downloading of a waveform as recited in Claims 1-8 and 13-24.

B. "Eliott teaches that the digital signal is only downloaded only [sic] if the unique ID is authenticated. Eliott teaches that the unique ID is the key."

The first sentence in the above-quoted passage appears to refer correctly to the fact that the server downloads the game software only if the expansion device is properly authenticated by its unique ID. But, as explained in detail in the February 3, 2006 Response, the unique ID is checked by the server to determine whether or not the expansion device is an authorized destination for downloads from the server. Eliott does not teach a code associated with the game software, much less comparing such a code with the unique ID and downloading the game software only on condition that the code matches the unique ID. As for the second sentence of the passage B above, 37 CFR § 1.104(c)(2) requires the Office Action to point out with particularity where the alleged teaching that "the unique ID is the key" can be found in Eliott.

C. "Eliott teaches that each device has a key associated with it. Authentication takes place when the unique ID is authenticated with the device key."

This passage seems to allege that each expansion device in Eliott has a key associated with it, and that this key is used in combination with the unique ID to authenticate the expansion device. Here again, 37 CFR § 1.104(c)(2) requires the Office Action to point out with particularity where the allegations in this passage can be found in Eliott. In any event, even if the allegations in this passage are correct, there is still no showing here that Eliott teaches a code associated with the game software, much less comparing such a code with the unique ID and downloading the game software only on condition that the code matches the unique ID.

D. Eliott teaches that the game is downloaded to the memory as long as the authentication is successful with the unique ID."

The above-quoted sentence is generally accurate. Notably though, this sentence amounts to a mere restatement of the first sentence in passage B above, and thus does not contribute anything new to the consideration of anticipation.

Applicant respectfully requests withdrawal of the § 102 rejections of Claims 1-8 and 13-24 in view of the foregoing.

II. REJECTIONS UNDER 35 U.S.C. § 103

Claims 9 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Eliott in view of Reitmeier (US Patent No. 6,560,285), and Claims 10-12 and 26-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Eliott in view of Rajsuman (US Patent No. 5,963,566). These rejections are respectfully traversed.

The aforementioned Claims 9-12 and 25-28 recite all of the exemplary features discussed above with respect to the rejections of Claims 1-8 and 13-24. Both Reitmeier and Rajsuman fail to remedy the above-described deficiencies of Eliott, so the rejections of Claims 9-12 and 25-28 are overcome for the same reasons given above with respect to the rejections of Claims 1-8 and 13-24.

Furthermore, Claim 26, as rewritten in independent form above, recites "*an automatic test equipment system adapted to request said download application to download said waveform to said signal generator.*" The Office Action alleges that this feature is found in Rajsuman, particularly at lines 25-37 of column 6. This allegation is respectfully traversed for the following exemplary reasons.

The cited portion of Rajsuman relates to downloading a test algorithm, test subroutines, and associated functional commands to an integrated circuit. The downloaded test algorithm, test subroutines and associated functional commands are software. This downloaded software is executed by a microprocessor within the integrated circuit in order to

test the integrated circuit (see also lines 34-44 of column 3 and lines 38-41 of column 6).

Thus, for at least the same reasons given above with respect to Eliott, Rajsuman does not teach downloading a waveform as recited in Claim 26. Moreover, in Rajsuman, the automatic test equipment fixture is the entity which downloads the aforementioned software to the integrated circuit. The passage of Rajsuman cited in the Office Action (lines 25-37 of column 6) explicitly teaches that the microprocessor within the integrated circuit executes a download command 102 that causes the automatic test equipment fixture to download test subroutines and associated commands to the integrated circuit. So it is the integrated circuit that requests the download, and the automatic test equipment fixture that sources the download in response to the request. Rajsuman thus fails to teach the above-quoted feature of Claim 26, and its dependent Claims 27 and 28.

Applicant respectfully requests withdrawal of the § 103 rejections of Claims 9-12 and 25-28 in view of the foregoing.

III.   <u>CONCLUSION</u>

As a result of the foregoing, the Applicant asserts that all Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number or email address indicated below.

Respectfully submitted,

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